

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

4D FACTORY, INC., *et al.*,¹

Debtors.

:
:
: Chapter 11
: (Subchapter V)
: Case No. 23-11618 (MEW)
: (Jointly Administered)
:

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THE 4D FACTORY LLC,

Plaintiff,

v.

MARK LONG, *et al.*,

Defendants,

:
:
:
: Adv. Proceeding No. 24-01319
:
: **STIPULATION AND [PROPOSED]**
: **ORDER FURTHER STAYING**
: **ADVERSARY PROCEEDING**
:

and

NEON MACHINE, INC., *et al.*,

Nominal Defendants.

-----X
AND ALL RELATED CONSOLIDATED ACTIONS
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This stipulation, agreement and order (the “Stipulation”) is entered into by Mark Long, Colin Foran, Naomi Lackaff, Aaron Nonis, Don Norbury, Mark Yeend (collectively, the “Delaware Plaintiffs”); Calvin Zhou; Polychain Ventures II LP and Polychain Ventures II (Parallel) LP (collectively, “Polychain”); Griffin Gaming Partners II, L.P. and Griffin Gaming Partners II Side Fund, L.P. (collectively, “Griffin”); Pierre-Edouard Planche, Benjamin Perszyk, and Josh Rosenthal (collectively, the “Fund Directors,” and together with the Delaware Plaintiffs,

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtors’ federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC (8935).

Calvin Zhou, Polychain, and Griffin, the “Neon Parties”); The 4D Factory LLC (the “Debtor”);² and Cort Javarone, Scott Honour, and Steve Horowitz (together, the “Delaware Defendants,” and collectively with the Debtor and the Neon Parties, the “Parties” and each a “Party”). Subject to this Court’s approval (*see, e.g., Citibank, N.A. v. Revlon, Inc., et al.*, Adv. No. 22-01134 (DSJ) (Bankr. S.D.N.Y. Sept. 13, 2022), Dkt. No. 13 (approving stipulation and order to stay proceedings); *In re Garrett Motion Inc., et al. v. Honeywell Int’l Inc. et al.*, Adv. No. 20-1223 (MEW) (Bankr. S.D.N.Y. Jan. 15, 2021), Dkt. No. 36 (same)), the Parties hereby stipulate and agree as follows:

RECITALS

WHEREAS, the Parties previously entered into a stipulation agreeing to various deadlines in the above-captioned adversary proceeding (the “Adversary Proceeding”), which was so-ordered by this Court, *see* [Adv. ECF No. 7];

WHEREAS, on April 15, 2024, the Parties entered into an additional stipulation amending certain deadlines in the Adversary Proceeding while the Parties discussed a potential consensual resolution of the issue of Network Launch, which stipulation was so-ordered by this Court, *see* [Adv. ECF No. 25];

WHEREAS, on April 22, 2024, after reaching a consensual resolution in principle regarding the issue of Network Launch and certain related matters, and in order to effectuate the agreement in principle, the Parties entered a third stipulation staying the Adversary Proceeding and all deadlines therein, including deadlines related to discovery, until the earlier of April 30, 2024 or the filing of a notice by any Party that it seeks to lift the stay, *see* [Adv. ECF No. 28] (collectively with Adv. ECF Nos. 7 and 25, the “Scheduling Stipulations”);

² References to the Debtors are to the Debtor and 4D Factory, Inc., collectively.

WHEREAS, on April 26, 2024, the Debtors filed a *Motion for an Order Authorizing the Debtors and Neon Parties' Limited Agreement Over Network Launch* [ECF No. 94] (as amended at ECF No. 95, the "9019 Motion"), reflecting a consensual resolution between the Parties, and a *Motion to Schedule Expedited Hearing and Shorten Notice for Motion for an Order Authorizing the Debtors and Neon Parties' Limited Agreement Over Network Launch* [ECF No. 96];

WHEREAS, the Court has scheduled the 9019 Motion to be heard on May 10, 2024 at 11:00 a.m. (prevailing Eastern Time);

WHEREAS, in consideration of the pending 9019 Motion, and in order to facilitate finalizing the Parties' agreement in principle and further discussions that could lead to resolution of one or more claims, asserted claims, or resolution of the Adversary Proceeding in its entirety, the Parties wish to further stay deadlines in the Adversary Proceeding, including those so-ordered by the foregoing stipulations;

WHEREAS, a stay of the Adversary Proceeding will conserve the Parties' and the Court's resources and avoid potentially unnecessary litigation while the 9019 Motion is pending; and,

WHEREAS, the Parties agree that a stay of all proceedings and deadlines, including discovery, in the Adversary Proceeding is appropriate to foster discussions that may lead to further consensual resolutions regarding the claims brought in the Adversary Proceeding;

NOW, THEREFORE, UPON THE FOREGOING RECITALS, IT HEREBY IS STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. The Parties hereby stipulate to continuance of the stay of the Adversary Proceeding (the "Stay") and all deadlines therein for all Parties and third parties, including those in the

Scheduling Stipulations, until the earlier of May 17, 2024, the filing of a notice by any Party that it seeks to lift the stay (a "Lift Stay Notice"), or the filing by the Parties of an amended scheduling stipulation.

2. The pre-trial conference scheduled to be held on May 7, 2024 is stayed and shall be removed from the Court's calendar. The Parties shall propose a new date for the pre-trial conference pursuant to paragraph 5 of this Stipulation.

3. A Party may only file a Lift Stay Notice after attempting in good faith to meet and confer with the Parties to this Stipulation to agree on a further amended schedule for litigating the claims in the Adversary Proceeding.

4. Any Lift Stay Notice shall include a certification of counsel that the filing Party attempted in good faith to meet and confer with the Parties to this Stipulation regarding a consensual amended schedule for litigating the claims in the Adversary Proceeding.

5. By the earlier of the first business day following the filing of a Lift Stay Notice or May 17, 2024, the Parties shall file (a) a proposed order and (i) amended scheduling stipulation or (ii) stipulation extending the Stay, or, if the Parties are unable to stipulate to an amended schedule, (b) proposed litigation schedules for the Court's consideration and approval.

6. The Parties further stipulate and agree that nothing herein shall be deemed a waiver of any rights, defenses, or arguments by the Parties.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the day and year first below written.

[Remainder of Page Intentionally Left Blank.]

Dated: May 1, 2024

By: /s/ Nicholas A. Bassett

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By: /s/ Avi Moshenberg

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SO ORDERED

Dated: May __, 2024

New York, New York

THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE